

(29,987)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 677

CAIRO, TRUMAN & SOUTHERN RAILROAD COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND JAMES C. DAVIS,
DIRECTOR GENERAL OF RAILROADS

APPEAL FROM THE COURT OF CLAIMS

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[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

No. B-235

CAIRO, TRUMAN & SOUTHERN RAILROAD COMPANY

vs.

THE UNITED STATES OF AMERICA and JAMES C. DAVIS, Director
General of Railroads

I. HISTORY OF PROCEEDINGS

On October 11, 1922, the plaintiff filed its original petition.

On December 9, 1922, the defendant filed a demurrer to said petition.

On April 9, 1923, the demurrer was argued by Mr. Sidney F. Andrews, for the defendant, and by Mr. S. S. Ashbaugh, for the plaintiff.

On April 30, 1923, the court entered the following order and memorandum:

ORDER SUSTAINING DEMURRER

This cause coming on to be heard was submitted upon the demurrer to the petition and was argued by counsel. On consideration whereof the court is of opinion that the demurrer is well taken.

It is therefore adjudged and ordered that the defendant's demurrer be, and the same is hereby, sustained, and the petition is dismissed.

MEMORANDUM

The Court's conclusion is based upon the considerations:

(1) That the jurisdiction of the Court of Claims in cases such as this is conferred by section 3 of the Federal control act, 40 Stat. 451. It provides for action by a board of referees and authorizes an agreement by the President with the carrier, and "failing such agreement" suit may be brought to determine the amount of just compensation. In the suit thus authorized the report of the referees is prima facie evidence of the amount of compensation and for the facts stated therein. The facts averred in the petition fail to show that the condition precedent contemplated by the statute has been complied with so as to bring the case within the jurisdiction of this court.

(2) That if the court have jurisdiction, the agreement, Exhibit A to the petition, concludes any rights the plaintiff might otherwise have.

[fol. 2] II. AMENDED PETITION—Filed June 7, 1923, by leave of court

Comes now the plaintiff, the Cairo, Truman & Southern Railroad Company, and for cause of action alleges:

1. That the Cairo Truman & Southern Railroad Company is a corporation duly organized and existing under and by virtue of the laws of the State of Arkansas, and as such corporation has for a long time been and now is engaged in business as a common carrier of freight and passengers for hire, both in the State of Arkansas and as [fol. 3] interstate commerce, and at all times hereinafter mentioned was so engaged in intrastate and interstate commerce with its office and principal place of business at St. Louis, Missouri, and that during the first six months of the period of Federal control it connected with the rails of the St. Louis-San Francisco Railway Company, then under Federal control.

That said James C. Davis is now the duly appointed, qualified, and acting Director General of Railroads, and as such is made a party defendant herein.

2. That under the power granted by the act of Congress approved August 29, 1916, the President of the United States on December 26, 1917, issued his proclamation and thereby took possession and control of the railroads of the United States, including this plaintiff and all its transportation facilities and business, for the purpose of more effectually prosecuting the war with Germany, and immediately appointed a Director General of Railroads, who took possession and control of the plaintiff, its railroad facilities and business, and operated the same down to and including the 29th day of June, 1918. That the issuing of said proclamation, the taking possession and control of said railroads and of this plaintiff, the appointment of said Director General of Railroads and his operation and control thereof, were all approved by the Act of Congress of March 21, 1918, known as the Federal Control Act.

That on the 29th day of June, 1918, the Director General of Railroads issued a relinquishment notice to the plaintiff in this case, whereby he pretended to relinquish the possession and control of this plaintiff, its railroad facilities and business, which said [fol. 4] notice was received by this plaintiff on or about the 1st day of July, 1918, and whether said notice was valid or void in law, the said plaintiff on said 1st day of July acted upon the same as legal and binding, and thereafter and from and including said 1st day of July, 1918, the officers of said plaintiff operated the railroad of the plaintiff in accordance with the provisions of the Federal Control Act, and the further provisions of Section 204 of the Transportation Act approved February 28, 1920.

3. That under and by virtue of the proclamation and order of the President so issued and made effective on January 1, 1918, this plaintiff, and all its railroad facilities and business, its income, receipts,

expenses of operation and control, became and were under the direct orders of the Director General of Railroads, and all were so operated in accordance with the proclamation of the President and the several provisions of the law applicable thereto, and the defendants became liable for the operation and control thereof, for the cost and maintenance of said operation and control, from January 1 to July 1, 1918, as provided by the Federal Control Act; and that the plaintiff and the President of the United States were unable to agree upon the compensation to be paid the plaintiff for the use of its property, franchises and railroad facilities, and have since been unable to agree thereon, and have not at any time made any agreement touching the same.

That ever since the 1st day of March, 1920, when the period of Federal control ceased by operation of law, the Director General has refused to acknowledge and has denied his liability for the operation and control of the plaintiff's railroad, its facilities and business, [fol. 5] during said six months from January 1 to July 1, 1918, and has refused to pay the costs and expenses of operation thereof, and to pay any compensation accruing to this plaintiff by virtue of the operation and control of its lines and business during said period of six months, and still refuses to acknowledge his liability and to pay the costs of operation or any loss sustained thereby, and to pay this plaintiff any rental or compensation for the use, operation and control of said railroad, its business and its property, during said period so designated.

4. That pretending to act under and by virtue of the proclamation so issued by the President, and by virtue of the provisions of the Federal Control Act, and by virtue of his own authority, more completely to control the business theretofore conducted by said plaintiff, and more completely to control and direct the business of this plaintiff, and to transfer the same to other lines of railroad then under his control and operation, the Director General by virtue of his power and influence over the business of the plaintiff operated in connection with lines of railroad then in his operation and control, advised and in effect forced and compelled this plaintiff to accept and sign a contract, then known as a per diem contract for short line railroads, under date of September 10, 1919, a full, true, and correct copy of which contract is hereto attached, marked Exhibit A, and made a part hereof.

That said contract was arranged, drawn and constructed entirely by the Director General, and contained such provisions as he demanded, and did not express a fair and equal agreement on the part of this plaintiff. That the same was not signed by the Director [fol. 6] General, or by anyone for him, but was accepted by the officers of the plaintiff for the purpose of saving for themselves such rights, privileges, and conveniences as were indicated by the Director General, and was signed for this purpose only and not otherwise, and for the supposed concessions set out in the contract itself.

That said contract was entirely unilateral, and was without any consideration whatever, granted by the Director General to and for the use of the plaintiff, and that all the pretended rights, privileges,

and conveniences supposed to be granted by the Director General to the plaintiff, were then the rights, privileges, and conveniences of the plaintiff granted to it by law. That the plaintiff gained nothing by the execution and acceptance of this contract, and by it lost no rights whatsoever.

That the whole of said contract always was, and now is, wholly null and void, for the reason that the same was prepared and demanded by the Director General without any power or authority so to do, and is in direct violation of law then in full force and effect, and attempted to create a relation already created by law, and different than what was provided therein; that no consideration was created therein or intended to be created therein for the use and benefit of the plaintiff and that no reference was made in said contract or intended to be made in said contract to the right of this plaintiff to recover from the United States and the Director General its cost of operation during said six months from January 1 to July 1, 1918, when said plaintiff and its railroad were under the control and operation of the Director General, and to recover any and all depreciation in property because of said use and operations during said period, and to recover a just compensation for the use and operation of [fol. 7] said railroad and all of its equipment during said period as guaranteed to it by law.

That said contract was in nowise and to no extent a waiver of its rights to recover from the United States and the Director General its expenses of operation, its loss in depreciation, and its just compensation above mentioned, and in the signing of said contract by the officers of the plaintiff, no intent was recorded that they accepted the terms of the contract as a waiver of said right in any way or to any extent whatsoever.

It is apparent from the contract that its provisions were prospective and applied solely from and after the date of relinquishment and were not to apply in anywise to the period of control from January 1 to July 1, 1918.

5. That during said period of six months from January 1 to July 1, 1918, because of the control and operation of said railroad and its properties, and because of the control and diversion of its traffic and business by the Director General, the plaintiff sustained a loss or deficit in its operating income in not less than the sum of \$6,908.40, which the Director General has refused to pay or reimburse.

That during said period and because of said control and operation the plaintiff has sustained a further loss in the under maintenance of equipment and by reason of the failure of the Director General adequately to provide for the repairs and renewals of road and stock and equipment in the sum of \$3,350.40, which has not been repaid.

That during said period the plaintiff has suffered a further loss by reason of the failure of the Director General adequately to provide for the maintenance of structures and right of way in the further [fol. 8] sum of \$5,360, which has not been repaid.

That during said period the plaintiff has suffered a further loss by reason of the failure of the Director General to supply the necessary materials used in the operation of said lines of railroad in the sum of \$13,957.14, which has not been repaid.

That the several amounts above enumerated are justly due the plaintiff, and that due demand was made for the same on the President and the Director General; but that the President and the Director General, although often solicited so to do, failed to agree with the plaintiff upon the amount of reimbursement so claimed to be due, and failed to agree upon any amount whatsoever as just compensation because of the taking, control and operation of said property, as alleged, and refused and still refuses to pay any amount whatsoever for said losses, as above demanded.

6. That after the Director General had so refused to pay said claims or any part thereof, the plaintiff applied to the Interstate Commerce Commission for the appointment of a Board of Referees, as provided by law, which application was granted, and a Board of Referees of three members was duly appointed, before whom this plaintiff duly presented its claim, as above set forth; that said Board of Referees duly heard said claim, and on June 14, 1922, decided the same and rejected the demands of the plaintiff. A full, true and correct copy of said decision as promulgated by said board is filed herewith as part of the files in this case, from which finding and decision the plaintiff now appeals to this court and asks that this appeal be heard and decided as provided by law.

[fol. 9] That the plaintiff is the owner of said claim, and no assignment or transfer of said claim or any part thereof or interest therein has been made, and the plaintiff has at all times borne true allegiance to the Government of the United States.

Wherefore the plaintiff prays for a judgment in the sum of \$29,575.94, and for such other and further relief as is provided by law.

S. S. Ashbaugh, Attorney for Plaintiff. G. B. Webster, Of Counsel.

Jurat showing the foregoing was duly sworn to by F. S. Charlot omitted in printing.

[fol. 10] EXHIBIT A TO AMENDED PETITION

Whereas the railroad of the Cairo, Truman and Southern Railroad Company, a corporation of the State (a) of Arkansas, with main line extending from Truman, Arkansas, to Weona, Arkansas, has been relinquished from Federal control; and

Whereas the said Railroad Company has elected not to enter into the standard co-operative short-line contract with the Director General of Railroads, but is desirous of obtaining the special advantages of two days' free time or reclaim allowance on cars, and such other co-operation as may be accorded to it by the Director General in

pursuance of his general policy of co-operation toward short-line roads as announced by him;

Now, therefore, the said Railroad Company, in consideration of the premises, and of obtaining the advantages of the two days' free time or reclaim allowance and such other co-operation as is accorded to it by the Director General of Railroads, hereby agrees to accept the same in full adjustment, settlement, satisfaction and discharge of any and all claims and rights, at law or in equity, which it now has, or hereafter can have, against the United States, the President, the Director General of Railroads, or any agent or agency thereof, by virtue of anything done or omitted pursuant to the acts of Congress relating to the Federal control of railroads, or any act of the President or of the Director General of Railroads: Provided, however, That nothing herein is intended to affect any claim said company may have against the United States for carrying the mails [fol. 11] or for other services rendered not pertaining to or based upon the Federal Control Act.

In witness whereof these presents have, on the 10th day of September, 1919, been duly signed, sealed, and delivered by the Cairo, Truman and Southern Railroad Company, by its president thereunto duly authorized, and its title of executing officer, corporate seal affixed, attested by its secretary.

Cairo, Truman and Southern Railroad Company, By F. S. Charlot, Its President (Title of Executing Officer). Attest:
H. F. Nelson, Asst. Secretary. [Seal.]

[fol. 12] III. DEMURRER TO AMENDED PETITION—Filed June 26, 1923

The United States of America and James C. Davis, Director General of Railroads, by the Attorney General of the United States, demurs to the amended petition filed herein upon the following grounds, to wit:

(1) Facts alleged in the amended petition do not constitute a cause of action within the jurisdiction of this court.

(2) Facts alleged in the amended petition do not show that the plaintiff is entitled to any relief as against the defendants or either of them.

(3) Facts alleged in the amended petition show a complete settlement and satisfaction of any and all claims plaintiff had or could have had against the United States or the Director General of Railroads under the Federal control act or on account of anything done or omitted to be done by the United States of America or the Director General of Railroads in respect to the matter set forth in plaintiff's amended petition.

(4) If, as alleged, the contract of settlement was executed by plaintiff under duress, or through fraud or mistake, plaintiff must first proceed in a court of equity to have same set aside before he

can proceed in this court to have ascertained the compensation, if any, he is entitled to.

Robert H. Lovett, Assistant Attorney General. Dwight E. Rorer, Attorney. A. A. McLaughlin, General Solicitor R. R. Administration. Sidney F. Andrews, General Attorney R. R. Administration.

[fol. 13] IV. ARGUMENT AND SUBMISSION OF DEMURRER

On October 22, 1923, the demurrer to the amended petition was argued and submitted by Messrs. A. A. McLaughlin and S. F. Andrews, for the defendant, and by Mr. S. S. Ashbaugh, for the plaintiff.

V. ORDER SUSTAINING DEMURRER—Entered November 5, 1923

This cause coming on to be heard upon the defendant's demurrer to the plaintiff's petition as amended, and the court being of opinion that the plaintiff is not entitled to recover doth hereby sustain said demurrer, and the plaintiff's petition as amended is dismissed.

See Memorandum at the former hearing.

By the Court.

VI. JUDGMENT OF THE COURT—Entered Nov. 5, 1923

At a Court of Claims held in the City of Washington on the 5th day of November, A. D., 1923, judgment was ordered to be entered as follows:

This case was submitted upon defendant's demurrer to plaintiff's amended petition, on consideration whereof the court is of the opinion that the demurrer is well taken.

It is therefore ordered, adjudged and decreed that the defendant's said demurrer to the plaintiff's amended petition be sustained, and that the amended petition be and the same is hereby dismissed.

By the Court.

[fol. 14] VII. PLAINTIFF'S APPLICATION FOR APPEAL—Filed Nov. 12, 1923

Comes now the plaintiff above named on this 12th day of November, 1923, and makes application for and gives notice of an appeal to the Supreme Court of the United States from the judgment heretofore entered herein on November 5, 1923, sustaining the defendant's demurrer to the plaintiff's amended petition and dismissing said amended petition.

S. S. Ashbaugh, Attorney for Plaintiff.

VIII. ORDER OF COURT ALLOWING APPLICATION FOR APPEAL—
Entered November 19, 1923

It is ordered by the court that the plaintiff's application for appeal be and the same is allowed.

By the Court.

[fol. 15] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer to the amended petition; of the judgment of the court; of the plaintiff's application for appeal; of the order of the court allowing said application for appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this Twentieth day of November, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. [Seal
of the Court of Claims.]

Endorsed on cover: File No. 29,987. Court of Claims. Term No. 677. Cairo, Truman & Southern Railroad Company, appellant, vs. The United States of America and James C. Davis, Director General of Railroads. Filed December 3, 1923. File No. 29,987.